



Ahmed v Fafi Intergrated Development Association (Cause E003 of 2025) [2025] KEELRC 1648 (KLR) (4 June 2025) (Ruling)

Neutral citation: [2025] KEELRC 1648 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS AT GARISSA
CAUSE E003 OF 2025**

BOM MANANI, J

JUNE 4, 2025

BETWEEN

ADENGEDI SUGOW AHMED CLAIMANT

AND

FAFI INTERGRATED DEVELOPMENT ASSOCIATION RESPONDENT

RULING

1. The Claimant was an employee of the Respondent until the end of March 2025 when the latter terminated his contract of service. According to the notice of termination of the contract between the parties, the reason for the Respondent's decision was the drop in donor funding, a matter which it asserts forced it to cut on the number of its members of staff and programmes.
2. The Claimant has moved to court to challenge the legality of the decision. He contends that the Respondent had no valid reason to end the relation between them. He further contends that the decision was arrived at without regard for due process.
3. According to the preliminary material before the court, the employment relationship between the parties was anchored on fixed term contracts of service. The relation was last renewed on 1st January 2025 for a period of eleven (11) months.
4. However, on 1st March 2025, the Respondent wrote to the Claimant to communicate its decision to terminate the relation. The letter indicated that the relation was to come to a close on 31st March 2025.
5. The Respondent cited a cut in humanitarian funding by the United States of America as the reason for its decision. According to the Respondent, the new political leadership in the aforesaid nation had suspended support for most humanitarian programmes across the globe with the consequence that its (the Respondent's) programmes had been negatively impacted forcing it to cut back on its staff and suspend some of its operations.



6. The Claimant contests the validity of the aforesaid reasons. It is his case that although the government of the United States of America took the aforesaid decision, the Respondent has not demonstrated that this was the reason for its decision to terminate the employment relation between them. He contends that the Respondent's principal donor, the UNHCR, only suspended 50% of its support for the Respondent's programmes. In his view, the 50% support that was left unaffected is sufficient to run the activities of the Respondent up to June 2025 as it reorganizes itself.
7. The Claimant further asserts that the aforesaid decision by UNHCR was communicated after the Respondent had already communicated its decision to terminate his contract. As such, he believes that the partial withdrawal of support by the UNHCR was not the reason why his contract was terminated.
8. Contemporaneous with the Statement of Claim, the Claimant filed the application dated 18th March 2025 seeking the following interim reliefs:-
 - a. An order certifying the application as urgent and admitting it to hearing on priority basis.
 - b. An order of mandatory injunction requiring the Respondent to reinstate him back into employment and to grant him access to his official email account.
 - c. An order of injunction to restrain the Respondent, its employees and or agents from terminating his contract and or advertising his position.
 - d. An order requiring the Respondent to deposit in court the sum of Ksh. 1,163,412.00 representing his anticipated salary for the balance of the contractual term.
 - e. An order of injunction to restrain the Respondent from utilizing the aforesaid amount from its budget.
 - f. An order for costs of the application.
9. The Respondent has opposed the application. It has sworn an affidavit dated 1st April 2025 in which it reiterates the matters highlighted earlier in this ruling to justify its decision.

Analysis

10. The parties are not in agreement regarding the reasons for termination of the contract of service between them. They are also not in agreement regarding whether the decision to terminate the relation was legitimately executed.
11. In order to resolve the controversy regarding whether the Respondent had a valid reason to terminate the contract between the parties and whether it adhered to due process in terminating the contract, the court has to hear the parties and evaluate the evidence which they will present to justify their contrasting positions on the matter. As such, it is inadvisable to take a position on the controversy at this preliminary stage.
12. At this stage of the case, all that the court is required to determine in deciding the application for interim injunctive reliefs is whether the Claimant has satisfied the conditions for the grant of orders of interim injunction. These conditions, which are articulated in the case of *Giella v Cassman Brown and Co Ltd [1973] EA 358*, require the applicant to establish the following:-
 - a. The presence of a prima facie case with a probability of success.
 - b. The fact that damages will not adequately redress the injury he (the applicant) will suffer in the event the order of injunction is not granted.



- c. The fact that the balance of convenience tilts in his (the applicant's) favour.
13. Regarding the first condition, the Claimant's case is that the Respondent has not demonstrated that it had a valid reason to terminate the employment relation between them. However, the Respondent contends that it had a valid reason for its decision.
 14. The Respondent points to the cut in donor funding as the reason for its decision. It contends that with the shortfall in funds, it had to reduce the number of its members of staff and projects in order to remain afloat.
 15. The Claimant contends that the Respondent did not adhere to due process in closing the employment relation between them. For example, he contends that the Respondent issued him with notice of a lesser period than is prescribed in law. He contends that although the notice which was served on him is dated 1st March 2025, it was delivered to him around 13th March 2025.
 16. I have considered the aforesaid preliminary matters raised by the parties. I understand the Respondent's case to be that the contract between the parties was affected by supervening events which were beyond its control and which, in a sense, rendered performance of the contract between them difficult. As such, it was forced to downsize.
 17. It appears to me that what the Respondent is contending is that due to operational challenges, it was forced to declare some positions within its rank and file redundant because it was no longer possible to keep all its employees on the pay roll. The law recognizes redundancy as a legitimate reason to terminate an employment relationship (see section 40 of the *Employment Act*). As such and in this context, it appears to me that the Respondent, prima facie, had a reason to consider declaring a redundancy. However, whether there are cogent grounds to support the redundancy is a matter of evidence which will require in-depth interrogation during trial of the case.
 18. If the Respondent's case is that it was forced to terminate the Claimant's contract on account of redundancy, then it was obligated to follow the procedure for declaring redundancies under section 40 of the *Employment Act* in terminating the Claimant's employment. These include: giving the Claimant a one month redundancy notice; informing the Claimant of the reasons and extent of the proposed redundancy; adhering to the selection procedure in declaring the redundancy; and paying the affected employees, including the Claimant, their terminal dues.
 19. The preliminary material before the court does not suggest that the Respondent adhered to this procedure. As such and in this context, the process, prima facie, appears to have been flawed. In the premises and having regard to the foregoing, I find that the Claimant has established a prima facie case that the procedure for terminating the employment relation between them may have been flawed.
 20. Notwithstanding that the Claimant has established a prima facie case, he must also demonstrate that if the orders of interim injunction that he seeks are not issued, he will suffer irreparable harm that cannot be compensated by damages. I note that the employment relation between the parties was anchored on a fixed term contract of eleven (11) months. At the time of termination of the contract, the balance of the term was nine (9) months.
 21. According to the contract between the parties, the Claimant's salary was fixed at Ksh. 129,268.00 per month. As such, the salary he would have earned for the balance of the term is Ksh. 1,163,412.00.
 22. From the foregoing, the loss which the Claimant is likely to suffer if the injunctive orders are not granted is quantifiable. In the premises, the court finds that the likely loss is measurable.



23. The Claimant contends that if the Respondent does not deposit the money to cover salary for the balance of his contractual term in court, it is unlikely to avail the money to him if and when the court awards him the amount in its final decision. The Claimant's position is informed by the fact that the Respondent is donor funded and it has been shown that the donor support has been withdrawn.
24. It is true that there is preliminary material suggesting that part of the Respondent's funding has been withdrawn. However, there is also preliminary material to suggest that the Respondent's principal donor is working to normalize the situation including through finding alternative donor support. As such, there is no conclusive evidence to support the Claimant's position that the Respondent will not be able to raise the sum of Ksh. 1,63,412.00 should it be required to do so at the close of this case.
25. Having regard to the foregoing, I arrive at the conclusion that the loss that the Claimant is likely to suffer should the orders sought not issue is quantifiable and capable of compensation through an award of damages. I further arrive at the conclusion that there is no evidence that the Respondent will not be able to compensate the Claimant should the court order compensation in his favour. As such, I find that the Claimant has not satisfied the second condition for the grant of the interim injunctive reliefs.
26. The Claimant has also sought for an order for mandatory injunction to reinstate him back into employment pending trial of the case. The rule of the thumb is that an order for mandatory injunction should seldom issue at the interlocutory stage of a case. Ordinarily, such order should only issue at the end of the case after evaluating the evidence presented by the parties.
27. Several judicial pronouncements have spoken to the foregoing. In *Joseph Kaloki t/a Royal Family Assembly Vs Nancy Atieno Ouma* [2020] eKLR, the Court of Appeal reiterated the position it took on the subject in the case of *Kenya Breweries Limited & another Vs Washington O. Okeyo* [2002] eKLR to the effect that whilst a court of law may issue a mandatory injunction at an interlocutory stage of a case, this should only be done in special circumstances and in the clearest of cases where the court is convinced that the dispute before it can be decided summarily at once on the facts presented.
28. In *Shariff Abdi Hassan Vs Nadhif Jama Adan* [2006] eKLR, the court reiterated the above position as follows:-
- “The courts have been reluctant to grant mandatory injunctions at the interlocutory stage. However, where it is prima facie established as per the standards spelt out in law as stated above that the party against whom the mandatory injunction is sought is on the wrong, the courts have taken action to ensure that justice is meted out without the need to wait for full hearing of the entire case.”
29. After evaluating the material before me, I am not convinced that this case meets the threshold for issuing a mandatory injunction order for reinstatement of the Claimant pending trial of the suit as requested by him. The Respondent has presented preliminary material to account for its decision to terminate the contract between the parties. It contends that the decision was informed by the cut in donor funding which affected its capacity to keep all of its employees.
30. In the face of the foregoing, the court is not convinced that it is appropriate to issue an order for reinstatement at this interlocutory stage before interrogating the matters raised by the defense during trial. At this stage, the court cannot determine whether the Respondent is capable of retaining the services of the Claimant before interrogating the impact of the alleged drop in donor funding on its operations. This is an issue that will require full trial for its just resolution.
31. In a series of decisions, courts have held that the interim relief of reinstatement to employment pending trial of a case should seldom issue. In the courts' view, the remedy should ordinarily await full trial of



the case (see *Kenya Tea Growers Association & another v Kenya Plantation and Agricultural Workers Union* [2018] eKLR, *Lindah Anyona Saleh v Co-operative Bank of Kenya Limited* [2022] eKLR, *Jacinta Sekoh Ochieng v Kenya Pipeline Limited* [2017] eKLR, *Gladys Boss Shollei v Judicial Service Commission* (Petition 39 of 2013) [2013] KEIC 1 (KLR) (Employment and Labour) (22 November 2013) (Ruling), *Keter v Family Bank Limited* (Cause E009 of 2022) [2022] KEELRC 12844 (KLR) (13 October 2022) (Ruling) and *Norah Okoth v Kenya Pipeline Company Limited* [2017] eKLR).

32. In the premises, I find that this is not a suitable case in which I should issue an order for mandatory injunction to reinstate the Claimant to his position at the interlocutory stage of the case. As such, I decline the order for reinstatement pending trial.
33. The Claimant has also sought an order requiring the Respondent to deposit the anticipated salary for the balance of his contractual term in court pending trial. In the alternate, he prays that the court issues an order prohibiting the Respondent from utilizing the funds from its budget.
34. The above interim reliefs presuppose that the court has made a finding that the Respondent's actions were illegal. They also presuppose that the court has made a finding that the Claimant is entitled to compensation for the balance of his contractual term. Yet, such findings can only be made after full trial of the case. To make such orders at the interlocutory stage of the case will be tantamount to implying culpability against the Respondent without the benefit of a full trial.

Determination

35. The upshot is that the application for interim reliefs dated 18th March 2024 is declined.
36. Costs of the application shall abide the outcome of the suit.

DATED, SIGNED AND DELIVERED ON THE 4TH DAY OF JUNE, 2025

B. O. M. MANANI

JUDGE

In the presence of:

..... for the Claimant

.....for the Respondents

Order

In light of the directions issued on 12th July 2022 by her Ladyship, the Chief Justice with respect to online court proceedings, this decision has been delivered to the parties online with their consent, the parties having waived compliance with Rule 28 (3) of the ELRC Procedure Rules which requires that all judgments and rulings shall be dated, signed and delivered in the open court.

B. O. M MANANI

